

Chapter DFI-Sec 2

REGISTRATION EXEMPTIONS AND FEDERAL COVERED SECURITY NOTICE FILINGS

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Note: Chapter SEC 2 was renumbered chapter DFI-Sec 2 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, December, 1996, No. 492.

DFI-Sec 2.01 Exempt securities. (1) (a) Any revenue obligation payable from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise, is exempted under s. 551.201 (1), Stats., if any of the following are met:

1. The enterprise is a public utility described under s. 551.201 (5), Stats., having securities registered under section 12 of the securities exchange act of 1934, or is a wholly-owned subsidiary of one or more of such utilities.

2. Any securities of the enterprise, or any securities of an unconditional guarantor of all payments under the lease, sale or loan arrangement, are covered securities under section 18(b)(1) of the securities act of 1933 or are exempt under s. 551.201 (6), Stats.

3. A notice of the proposed offering is filed with the division prior to the offering, including a trust indenture meeting the requirements of s. DFI-Sec 3.04, an official statement or a prospectus meeting the requirements of s. DFI-Sec 3.03 that contains financial statements for the enterprise and additional information as the division may require, and the division does not by order deny the exemption within 10 days of the date the notice is filed.

(b) Any guarantee of, or any put option or similar agreement to purchase from a holder of, any security exempt under s. 551.201 (1), Stats., is exempted from s. 551.301, Stats.

(3) The Chicago stock exchange is designated as a national securities exchange qualifying for registration exemption status under s. 551.201 (6), Stats., but only with respect to Tier 1 securities listed on that exchange, provided that proposed rule changes with respect to its Tier 1 securities are approved by the U.S. securities and exchange commission, and provided that a Memorandum of Understanding is entered into and is in force and effect between the Chicago stock exchange and the north american securities administrators, inc. The designation is subject to the authority of the division to revoke the designation by order based upon a determination that the forecast exchange's requirements for listing or maintenance for Tier 1 securities as contained in the Memorandum of Understanding and as published in the Commerce Clearing House NASAA Reports, have been so changed or insufficiently applied that the protection of investors contemplated by the exemption no longer exists. The division also may deny or revoke, by order, registration exemption status accorded by this paragraph with respect to a specific issue of securities or category of securities on the exchange. The issuance of any order by the division under this paragraph shall be in accordance with the provisions of the Memorandum of Understanding relating to notice of and opportunity for hearing, written findings of fact and conclusions of law, and judicial review.

(4) (a) The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201 (7) (intro.), Stats., that is a domestic, Wisconsin corporation to persons other than its members is available for use if the issuer or a registered broker-dealer files a notice of the proposed issuance with the division prior to the offering,

including: a trust indenture meeting the requirements of s. DFI-Sec 3.04, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. DFI-Sec 3.03 (1); and such additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days.

(b) The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201 (7) (intro.), Stats., that is a domestic, Wisconsin corporation, is available for use without the need for a filing with the division if the securities are sold exclusively to its members. A person does not become a "member" for purposes of this subdivision solely by reason of the purchase of the issuer's securities.

(5) The exemption for the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by a person or issuer listed in s. 551.201 (7) (intro.), Stats., that is not a domestic, Wisconsin corporation, is available for use if the issuer or a registered broker-dealer files a notice of the proposed issuance with the division prior to the offering, identifying the security and the basis of its qualification under par. (a) or (b) and includes: a trust indenture meeting the requirements of s. DFI-Sec 3.04, under which the evidence of debt is proposed to be issued; a prospectus describing the issuer, the trust indenture and the evidence of debt proposed to be issued, which shall be given or sent to each person to whom an offer of such evidence of debt is made at the time or times specified in s. DFI-Sec 3.03 (1); and such additional information as the division may require; and the division does not by order deny or revoke the exemption within 10 days. The security qualifies under this exemption if the issuer and any predecessor have not defaulted within the current fiscal year or the 3 preceding fiscal years in any fixed interest or principal obligation; and the security qualifies under either of the following:

(a) 1. The issuer and its predecessors have not been in existence for 3 years, and the securities proposed to be sold are secured by a mortgage or deed of trust upon land and buildings which is or will become a first lien at or prior to the issuance of such evidences of debt, or provisions satisfactory to the division are made for impounding the proceeds from their sale until such first lien is established, and the total amount of such securities does not exceed 50% of the then fair market value of the land and buildings included in such mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

2. A signed or conformed opinion of counsel for the issuer or other evidence satisfactory to the division shall be provided with respect to the validity and rank of the lien of the mortgage or deed of trust, and evidence satisfactory to the division shall be provided that the total amount of the securities proposed to be offered does not exceed 50% of the then fair market value of the land and buildings included in the mortgage or deed of trust, less the amount of any unpaid special assessment taxes.

(b) 1. The issuer or its predecessors have had an excess of revenues over expenses, excluding interest expense, provision for

depreciation and extraordinary items, for each of the 2 fiscal years next preceding such offer or sale, or average net revenues for the last 3 fiscal years next preceding such offer or sale, of not less than 1-1/2 times the aggregate annual interest requirements on the issue of securities to be sold under this subsection and all securities of equal or prior rank to be outstanding immediately after such sale.

2. A balance sheet of the issuer as of the end of the last fiscal year preceding the date of filing, and statements of income and changes in financial position and an analysis of surplus of the issuer shall be filed for each of its 3 immediately preceding fiscal years meeting the requirements of s. DFI-Sec 7.06.

History: Cr. Register, December 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; cr. (6), Register, October, 1974, No. 226, eff. 11-1-74; r. (1), renum. (6) to be (1) and am., renum. (2) to (5) to be (3) to (6), am. (3) and (4), r. and recr. (5), cr. (2) and (7), Register, December, 1977, No. 264, eff. 1-1-78; am. (2), r. (3), renum. (4), (5) and (7) to be (3), (4) and (5), am. (3) (a), cr. (7) and (8), Register, September, 1978, No. 273, eff. 10-1-78; emerg. am. (1) (a) 2., eff. 10-1-78; am. (1) (a) 2., Register, January, 1979, No. 277, eff. 2-1-79; am. (7) (d) and (h), Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (a) 1. to 3., (3) (a), (4) (a) and (b), (5) (f), (6) (a) and (7) (a) and (d), Register, December, 1980, No. 300, eff. 1-1-81; am. (1) (a) 3. and (3) (a), cr. (7m), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (1) (c) and (d), (10), (11) and (12), eff. 5-1-82; cr. (1) (c) and (d), (9), (10) and (11), Register, September, 1982, No. 321, eff. 10-1-82; am. (7) (d), Register, December, 1982, No. 324, eff. 1-1-83; am. (1) (a) 3., Register, December, 1983, No. 336, eff. 1-1-84; am. (1) (a) 3., r. (10), renum. (11) to be (10), Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (1) (a), r. (7), eff. 1-1-86; r. (7), renum. (8) to (10) to be (7) to (9), Register, March, 1986, No. 363, eff. 4-1-86; am. (1) (a), Register, May, 1986, No. 365, eff. 6-1-86; emerg. am. (1) (c) 3., eff. 7-1-86; am. (1) (b), (c) 2. and 3., (3) (a) and (4) (b), r. (7m), Register, December, 1986, No. 372, eff. 1-1-87; emerg. am. (1) (c) 3., eff. 7-1-88; am. (1) (c) 3. and (9) (b) 14., Register, December, 1988, No. 396, eff. 1-1-89; renum. (3) to (9) to be (4) to (10), cr. (3), Register, December, 1990, No. 420, eff. 1-1-91; renum. (3) to be (3) (a), cr. (3) (b), Register, December, 1991, No. 432, eff. 1-1-92; emerg. cr. (1) (c) 4. to 6., (d) 4. to 6., eff. 5-1-94, cr. (1) (c) 4. to 6., (d) 4. to 6., Register, September, 1994, No. 465, eff. 10-1-94; am. (1) (a), 3., r. (1) (c) 2. and 3., (d) 2. and 3., renum. (1) (c) 4., 5. and 6., (d) 4., 5. and 6. to be (1) (c) 2. to 4. and (d) 2. to 4., cr. (3) (c) and (d), Register, December, 1995, No. 480, eff. 1-1-96; emerg. cr. (1) (c) 5. and (d) 5. eff. 7-1-96; cr. (3) (e), Register, July, 1996, No. 487, eff. 8-1-96; cr. (1) (c) 5., (d) 5., Register, November, 1996, No. 491, eff. 12-1-96; renum. (6) (intro.) to be (6) and am., r. (6) (a) to (h), Register, December, 1996, No. 492, eff. 1-1-97; corrections in (1) (a) and (4) (a) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; am. (1) (a) 2., (9) and (10) (a), r. (3) (a) to (d), Register, December, 1998, No. 516, eff. 1-1-99; correction made under s. 13.93 (2m) (b) 1., Stats., Register, December, 1998, No. 516; emerg. cr. (1) (c) 6. and (1) (d) 6., eff. 2-25-99; cr. (1) (c) 6. and (1) (d) 6., Register, August, 1999, No. 524, eff. 9-1-99; renum. (3) to be (3) (a), cr. (3) (b), Register, December, 1999, No. 528, eff. 1-1-00; CR 08-077: am. (1) (a), (b), (4) (a), (9) and (10) (a), r. (1) (c), (d), (2), (3) (b) and (5) to (8), renum. (3) (a) to be (3) and am., r. and recr. (4) (b), cr. (5) Register December 2008 No. 636, eff. 1-1-09; CR 09-056: r. (9) and (10) Register December 2009 No. 648, eff. 1-1-10.

DFI-Sec 2.02 Exempt transactions. (1) An “isolated nonissuer transaction” within the meaning of s. 551.202 (1), Stats., means:

(a) Any sale of an outstanding security by or on behalf of a person not in control of the issuer or controlled by the issuer or under common control with the issuer and not involving a distribution; but if the sale is effected through a broker-dealer, the transaction is deemed isolated only if it is one of not more than 5 such transactions effected by or through the broker-dealer in this state during the prior 12 months; and

(b) Any sale of an outstanding security by or on behalf of a person in control of the issuer or controlled by the issuer or under common control with the issuer if the sale is effected pursuant to brokers’ transactions in accordance with section 4 (4) of the Securities Act of 1933 and rule 144 thereunder; or pursuant to any other transaction not effected through a broker-dealer and not involving a distribution if the sale, including any other sales by the person of securities of the same class during the prior 12 months, does not exceed 1% of the outstanding shares or units of that class.

(2) In any nonissuer transaction effected by or through a registered broker-dealer under s. 551.202 (6), Stats., pursuant to an unsolicited order or offer to purchase, the broker-dealer shall obtain from the purchaser a written acknowledgment that the purchase was unsolicited, or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith shall confirm that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. This exemption includes only

transactions between a broker-dealer and a purchaser of a security.

(5) With respect to an offer or sale of a security exempted under s. 551.202 (14) or (24), Stats.:

(a) Offerees or persons holding directly or indirectly all the issuer’s securities include all joint or common owners and all beneficial owners of its securities, and all beneficial owners of any corporation, partnership, association or trust holding any of the issuer’s securities and organized in connection with the offer or sale of the securities, provided that any relative or spouse, or any relative of the spouse, taking or holding the securities in joint or common tenancy with and having the same home as the offeree or person, shall not be deemed a separate offeree or person;

(b) Issuers affiliated by reason of direct or indirect control or persons affiliated by reason of direct or indirect control of any issuer are deemed to be a single issuer or person; but use of an exemption for the offer and sale of securities by such affiliated issuer or person shall not be denied on account of such affiliation provided the offer and sale are not part of a common business purpose or plan of offering, or if upon the filing of an application the division so orders. A “common business purpose or plan of offering” is presumed where the offer or sale of securities is not separate and distinct from another offer and sale of securities with respect to (i) the application of proceeds, (ii) the physical proximity of real property or other assets, or (iii) the financial affairs of the business;

(d) The exemption for any offer or sale under s. 551.202 (14), Stats., is withdrawn with respect to:

1. Except as provided in this subdivision, any offer or sale of interests in a limited partnership that is or will be primarily engaged in oil, gas or mining activities, any investment contract irrespective of the kind of assets held or business engaged in by the enterprise, or any certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under the title or lease, if the aggregate offering price or face amount, whichever is greater, of all securities to be offered by or on behalf of the issuer, together with the value of any securities sold to persons in this state by or on behalf of the issuer during the prior 12 months, exceeds \$100,000, unless prior to the offering the issuer files a notice of the proposed offer or sale with the division, including any prospectus, circular or other material to be delivered to offerees, and other information as the division may require, and the division does not by order withdraw, deny or revoke the exemption within 10 days. This paragraph is not applicable to any offer or sale made by a broker-dealer registered in Wisconsin if the broker-dealer is not affiliated with either the issuer or sponsor of the issuer by means of direct or indirect common control;

2. Any offering of securities if the issuer, any of its officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in s. DFI-Sec 2.029 as a result of any of the causes specified in s. DFI-Sec 2.029 (3) (a) 1. to 4., except for any person or persons subject to a disqualification who meets the conditions for waiver in s. DFI-Sec 2.029 (3) (b) 1., or for any person who receives a waiver by the division upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be withdrawn.

(7) (a) “Stock dividend or equivalent equity distribution” within the meaning of s. 551.202 (22), Stats., does not include any action by the corporation which has or may have the effect of consolidating securities of a class of outstanding equity securities into a smaller number of securities of that class;

(b) “Stock dividend” within the meaning of s. 551.202 (22), Stats., includes the issuance of shares under a dividend reinvestment plan in which the election by a shareholder to participate in

the plan is voluntary and such election may be rescinded at any time upon notice to the issuer.

(9) The following transactions are exempted under s. 551.203, Stats., without limiting the division's authority thereunder:

(a) An exemption under this subsection is available for any isolated issuer transaction relating to redeemable securities of an investment company registered under the investment company act of 1940, effected through a registered broker-dealer pursuant to an unsolicited order or offer to purchase, provided that the broker-dealer obtains from the purchaser a written acknowledgment that the purchase was unsolicited or the confirmation delivered to the purchaser or a memorandum delivered in connection therewith confirms that the purchase was unsolicited by the broker-dealer or any agent of the broker-dealer. A transaction is presumed to be "isolated" if it is one of not more than 3 such transactions during the prior 12 months.

(c) Any transaction pursuant to an offer to existing security holders of the issuer, and to not more than 25 other persons in this state less the number of persons in this state with whom the issuer has effected any transactions during the period of 12 months preceding the offer pursuant to s. 551.202 (14) and (24), Stats., excluding persons listed in s. 551.102 (11), Stats., and rules thereunder, if no commission or other remuneration other than a standby commission is paid or given directly or indirectly for soliciting any security holder in this state; and if the issuer files with the division prior to the offering a notice specifying the terms of the offer, including any prospectus, circular or other material to be delivered to offerees in connection with the transaction and such other information as the division may require, and the division does not by order disallow the exemption within 10 days.

(d) For purposes of the registration exemption in s. 551.202 (2), Stats., any Standard & Poor's, Mergent or Fitch securities manual that contains, in whatever format, the information specified in s. 551.202 (2) (d) 1. to 4., Stats., is designated as a "nationally recognized securities manual" under s. 551.202 (2) (d), Stats.

(e) Any offer or sale of securities pursuant to a transaction not involving a public offering under the securities act of 1933 which the division by order exempts upon application filed by the issuer or seller, including such information as the division may require, effected in compliance with such conditions as the division may prescribe.

(g) Any offer by a registered broker-dealer pursuant to a preliminary prospectus, provided all the following requirements are met:

1. The securities are the subject of a registration statement filed under s. 551.303 or 551.304, Stats., or a notice filed under s. 551.201 (1) or (7), or 551.202 (15), Stats.;

2. The preliminary prospectus has been filed with the U.S. securities and exchange commission or the division for a period of 10 days, and the division does not by order deny the exemption; and

3. Before the securities referred to in subd. 1. may legally be sold, no customer funds are received and no customer signs any subscription agreement or similar document relating to the securities offered other than a tentative reservation of securities that is not binding on the subscriber until ratified by the subscriber after the securities may legally be sold.

(h) Any transaction, in other than the initial public offering, involving any government security, other than a revenue obligation and other than a security issued or guaranteed by the United States, or any agency or corporate instrumentality of the United States, where the government security is of investment quality rating as determined by the office of the division of banking for the state of Wisconsin or by the comptroller of the currency by virtue of credit worthiness, or any transaction involving any government security dated prior to the effective date of this paragraph.

(i) Any offer or sale of securities that qualifies for use of a transactional registration exemption under s. DFI-Sec 2.027, 2.028 or 2.029.

(j) Offers or sales of a discretionary or managed trading account involving discretion or management provided by a broker-dealer registered in this state or by an investment adviser registered in this state.

(k) Any offer, but not a sale, of a security through a presentation to potential investors at an organized venture capital fair or other investment forum designated in writing by the division. In order to be designated as a venture capital fair or investment forum for purposes of this exemption, a written application for designation shall be submitted to the division either by a sponsor of the fair or forum or by any interested person if accompanied by the written affirmation of a sponsor, setting forth the dates, places and times the activity will take place, the names and addresses of all sponsors of the activity, and the criteria to be met for a firm or person to participate in the fair or forum. Within 10 days from the receipt of the application or 10 days from the date of receipt of any amendment or supplemental information to the application required by the division, the division shall either designate the applicant a venture capital fair or investment forum or notify the applicant in writing why such a designation will not be made. For purposes of this paragraph, the terms "venture capital fair" or "investment forum" include, but are not limited to, gatherings open to public attendance that are sponsored by one or more not-for-profit entities at which persons representing existing or proposed businesses may make presentations regarding their business plans and products, or their financing or investment capital needs or proposals.

(L) An exemption under this subsection is available for any transaction by the sponsor of a unit investment trust involving the resale of a share of beneficial interest in the trust that meets all of the following conditions:

1. The sponsor acquired the share of beneficial interest in the secondary market.

2. The share of beneficial interest had been sold in the secondary market by a public holder of the share after the initial public offering of shares by the trust had been completed.

(n) Any offer or sale of a security by an issuer in a transaction that meets each of the following requirements based on the North American Securities Administrators Association Model Accredited Investor Exemption:

1. Sales of the securities shall be made only to persons who are accredited investors as defined in 17 CFR 230.501(a), or who the issuer reasonably believes are accredited investors.

2. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or had indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

3. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within 12 months of sale shall be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under s. 551.303 or 551.304, Stats., or to an accredited investor pursuant to an exemption available under ch. 551, Stats.

4. Neither the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's officers, directors, general partners, beneficial owners of 10% or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. DFI-Sec 2.029 (3) (a) 1. to 4., absent an applicable waiver

under s. DFI-Sec 2.029 (3) (b), and with the timing of the disqualification events described in s. DFI-Sec 2.029 (3) (a) computed for purposes of this exemption from the date of the filing under subd. 9. of this section.

5. A general announcement of the proposed offering may be made by any means, which shall include each of the following information items only, except as provided in subd. 6., and unless additional information is specifically permitted by the division:

- The name, address and telephone number of the issuer of the securities;
- The name, a brief description and price, if known, of any security to be issued;
- A brief description of the business of the issuer in 25 words or less;
- The type, number and aggregate amount of securities being offered;
- The name, address and telephone number of the person to contact for additional information; and
- A statement disclosing that sales will only be made to accredited investors, that no money or other consideration is being solicited or will be accepted by way of this general announcement, and that the securities have not been registered with or approved by any state securities agency or the U.S. securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

6. The issuer, in connection with an offer, may provide information in addition to the general announcement under subd. 5., if the information meets either of the following requirements of this subdivision:

- The information is delivered through an electronic data-base that is restricted to persons who have been prequalified as accredited investors; or
- The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

7. No telephone solicitation shall be permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

8. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors shall not disqualify the issuer from claiming the exemption under this rule.

9. The issuer shall file with the division within 15 days after the first sale in this state in reliance on this exemption, a copy of the general announcement, a consent to service of process, a fee of \$200, and a completed Form AI as prescribed in s. DFI-Sec 9.01 (1) (e) for use of this exemption.

(o) Pursuant to s. 551.203, Stats., a transactional securities registration exemption is available for the sale of any outstanding security by or on behalf of a person not the issuer and not in control of the issuer or controlled by the issuer or under common control with the issuer at a price reasonably related to the current market price if the issuer or an applicant files with the division prior to the offering a notice of the proposed sale, including: the prospectus used in the most recent offering of the securities proposed to be sold; a copy of the issuer's articles of incorporation and by-laws, or equivalents, as currently in effect; any information specified in ss. DFI-Sec 3.02 and 3.03, and not contained in the filed prospectus; the trust indenture, if any, under which the securities proposed to be sold are issued; the information concerning the public market for the security; a balance sheet of the issuer as of the end of the last fiscal year of the issuer preceding the date of filing and statements of income and changes in financial position and analysis of surplus for such fiscal year meeting the requirements of s. DFI-Sec 7.06; an undertaking to file with the division within 120 days (180 days with respect to a corporation organized and operated not for private profit but exclusively for religious, educational, benevolent or charitable purpose) after the end of each fis-

cal year of the issuer comparable financial statements of the issuer for each such fiscal year; and an undertaking to furnish the division with a written report within 30 days after the happening of any material event affecting the issuer or the securities proposed to be sold. The exemption, unless disallowed by order of the division within 10 days, is effective so long as the information required to be furnished is kept current.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; emerg. cr. (11), eff. 11-4-75; cr. (11), Register, February, 1976, No. 242, eff. 3-1-76. Am. (1) (a), (3) (a), and (b), (5) and (6), renum. (9) (10) and (11) to be (10), (11) and (9), am. (9) (10) (intro.) and (11) (a) and (e), r. and recr. (10) (b), cr. (11) (f) and (g), Register, December, 1977, No. 264, eff. 1-1-78; am. (6) (b) and (d) 1., Register, September, 1978, No. 273, eff. 10-1-78; am. (5) (c), (6) (b) and (11) (f) 6., Register, December, 1979, No. 288, eff. 1-1-80; am. (1) (b), (2) and (3) (a) and (b), r. (4), renum. (5) to (11) to be (4) to (10), and am. (5) (a), (c), and (d) 1., (6), (9) and (10), Register, December, 1980, No. 300, eff. 1-1-81; cr. (9) (c) and am. (10) (d), Register, December, 1981, No. 312, eff. 1-1-82; emerg. cr. (10) (h), eff. 5-1-82; cr. (10) (h), Register, September, 1982, No. 321, eff. 10-1-82; am. (3) (a) and (5) (d) 1., cr. (10) (i), Register, December, 1982, No. 324, eff. 1-1-83; cr. (10) (j), Register, August, 1983, No. 332, eff. 9-1-83; am. (1) (a), (5) (d) 1. and (10) (b), Register, December, 1983, No. 336, eff. 1-1-84; emerg. r. (10) (j), eff. 1-1-84; r. (10) (j), Register, May, 1984, No. 341, eff. 6-1-84; am. (10) (g), Register, December, 1984, No. 348, eff. 1-1-85; am. (3) (b) and (10) (f) 4., Register, December, 1985, No. 360, eff. 1-1-86; emerg. am. (10) (g) 1., eff. 1-1-86; cr. (10) (j), Register, March, 1986, No. 363, eff. 4-1-86; am. (10) (g) 1., Register, May, 1986, No. 365, eff. 6-1-86; am. (1) (a) and (9) (c), cr. (10) (k), Register, December, 1986, No. 372, eff. 1-1-87; am. (10) (j), Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. (4) (c), am. (10) (j), cr. (10) (l) and (m), Register, December, 1988, No. 396, eff. 1-1-89; am. (4) (c) (intro.), 1. and 2. (intro.), (5) (c) and (d) 3., Register, December, 1989, No. 408, eff. 1-1-90; r. (6), renum. (4) (d), (7) to (10) to be (4) (e) and (6) to (9) and am. (9) (f) 6., cr. (4) (d), Register, December, 1991, No. 432, eff. 1-1-92; reprinted to correct error in (4) (d) 4., Register, February, 1992, No. 434; am. (4) (d) 4. and (6), renum. (4) (e) to be (4) (f), cr. (4) (e), Register, December, 1992, No. 444, eff. 1-1-93; cr. (4) (g), Register, May, 1994, No. 461, eff. 6-1-94; r. (4) (d) 1. to 5., renum. (4) (d) (intro.) to be (4) (d) and am., am. (5) (a), (9) (c), (f) 2., cr. (9) (n), Register, December, 1994, No. 468, eff. 1-1-95; am. (1) (a), (4) (c) 2., (5) (d) 1., cr. (4) (h), (9) (n), r. and recr. (5) (d) 2., r. (5) (d) 3., (9) (i), renum. (9) (j) to (n) to be (9) (i) to (m) and am. (9) (h) and (L), Register, December, 1995, No. 480, eff. 1-1-96; am. (5) (c), renum. (9) (f) (intro.), (m) and (n) to be (9) (f), (L) and (m) and am. (9) (f), r. (9) (f) 1. to 8., (L), Register, December, 1996, No. 492, eff. 1-1-97; corrections in (3), (8) (c) and (g) made under s. 13.93 (2m) (b) 7., Stats., Register, March, 1997, No. 495; am. (9) (a) and (L), Register, December, 1998, No. 516, eff. 1-1-99; am. (9) (a) and (L) (intro.), Register, December, 1999, No. 528, eff. 1-1-00; am. (1) (intro.), (9) (c) and (m), renum. (4) (intro.) to (h) to be (4) (a) (intro.), 1. to 7. and (b), Register, December, 2000, No. 540, eff. 1-1-01; CR 01-083: am. (4) (a) 3. b., cr. (9) (n), Register December 2001 No. 552, eff. 1-1-02; CR 03-069: r. (4) (b), renum. (4) (a) 1. to 7. to be (4) (intro.), (a) to (g) Register November 2003 No. 575, eff. 12-1-2003; CR 08-077: am. (1) (intro.), (2), (5) (intro.), (d), (7) (a), (b), (9) (intro.), (a), (c), (g) (intro.), 1., (i), (j), (n) 3. and 4., r. (3) (intro.), (a), (4) (g), (5) (c), (6), (8), (9) (d) and (f), renum. (3) (b) to be (9) (o) and am., renum. (4) (intro.) to (f) to be DFI-Sec 1.02 (8) (intro.) to (f) and am. (8) (intro.) and (e), cr. (9) (d) Register December 2008 No. 636, eff. 1-1-09; correction in (9) (c) made under s. 13.92 (4) (b) 7., Stats., Register February 2009 No. 638; CR 09-056: r. (9) (b) and (m) Register December 2009 No. 648, eff. 1-1-10.

DFI-Sec 2.027 Exemption for solicitations of interest prior to registration or exemption. (1) A transaction exemption is available under s. 551.203, Stats., for an offer, but not a sale, of a security made by or on behalf of an issuer pursuant to delivery of a written document or use of a newspaper publication or scripted media broadcast containing the information prescribed in the form in s. DFI-Sec 9.01 (1) (c), for the sole purpose of soliciting an indication of interest from prospective purchasers in receiving a prospectus, private placement memorandum or equivalent disclosure document for the security, if the following conditions are satisfied, except to the extent that sub. (2) is applicable.

(a) The issuer intends that sales of the security be either:

- Registered under ch. 551, Stats.; or
- Exempt from registration under an available exemption in any subsection of s. 551.202, Stats., or any exemption rule under s. 551.203, Stats.

(b) Not later than the date of the initial solicitation of interest made under this section, the offeror shall file with the division a completed solicitation of interest form as prescribed in s. DFI-Sec 9.01 (1) (c), together with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published. Material amendments to the solicitation of interest form or to any related materials used to conduct solicitations shall be filed with the division not later than the date of their first use. Any written document under this subsection may include a cou-

pon, returnable to the issuer indicating interest in a potential offering, revealing the name, address and telephone number of the prospective purchaser.

(c) The text of any published notice or script for broadcast, and any printed material delivered in any solicitation of interest under this section, shall begin with the disclosures and information required in, and in the format of, the solicitation of interest form specified in s. DFI-Sec 9.01 (1) (c).

(d) The offeror does not know, and in the exercise of reasonable care could not know, that any of the issuer's officers, directors, general partners, controlling persons or affiliates thereof are or would be disqualified from use of the registration exemption in s. DFI-Sec 2.029 as a result of any of the causes specified in s. DFI-Sec 2.029 (3) (a) 1. to 4. except for any person or persons subject to a disqualification who meets the conditions for waiver in s. DFI-Sec 2.029 (3) (b) 1.

(e) Solicitations of interest pursuant to this section shall not be made after the filing of either a registration statement under ch. 551, Stats., the filing of materials required for a claim of registration exemption under s. 551.202 or 551.203, Stats., or use of any available self-executing exemption under s. 551.202 or 551.203, Stats.

(f) Sales of the securities that are the subject of solicitations of interest under this section shall not be made until 20 calendar days after the last delivery of a solicitation of interest document or a radio or television broadcast or other media publication.

(2) (a) A failure to comply with any of the conditions in sub. (1) will not result in the loss of the securities registration exemption under this section for any offer to a particular individual or entity if the offeror demonstrates each of the following are met:

1. The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity; and

2. The failure to comply was insignificant with respect to the offering as a whole; and

3. A good faith and reasonable attempt was made to comply with the conditions in sub. (1) (a) to (f).

(b) Where an exemption is established only through reliance upon this subsection, the failure to comply with the conditions in sub. (1) (a) to (f) shall constitute a basis for action that may be taken by the division under s. 551.603, Stats., and shall constitute a basis for action that may be taken by the division under s. 551.204, Stats., to deny or revoke the exemption as to a specific security or transaction.

History: Cr. Register, December, 1995, No. 480, eff. 1-1-96; renum. from SEC 2.028 and am. (1) (c), Register, December, 1996, No. 492, eff. 1-1-97; CR 08-077: am. (1) (intro.), (a) 2., (d), (e) and (2) (b) Register December 2008 No. 636, eff. 1-1-09.

DFI-Sec 2.028 Wisconsin issuer registration exemption by filing. If all of the following conditions are met, other than any condition or conditions waived by the division upon a showing of good cause, a transaction registration exemption is available under s. 551.203, Stats., for any offer or sale for cash of the securities of an issuer having, both before and upon completion of the offering, its principal office and a majority of the full-time employees located in this state:

(1) The securities are sold to not more than 100 persons in this state, excluding:

(a) Persons described in s. 551.102 (11), Stats., and rules thereunder, and in s. 551.202 (13) (am), Stats.;

(b) Members of the immediate family of an executive officer or director of the issuer who have the same permanent residence as the officer or director.

(2) No commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in this state in reliance on the exemption in this section except to broker-dealers and agents registered in this state.

(3) Neither the issuer, its officers, directors, general partners, controlling persons or affiliates, nor any broker-dealer or agent offering or selling the securities is or would be disqualified under s. DFI-Sec 2.029 (3).

(4) The aggregate offering price of the securities sold in the offering to persons in Wisconsin pursuant to this exemption does not exceed \$5,000,000, provided that the issuer has not made other offerings in Wisconsin pursuant to this exemption that would meet the criteria for being integrated with the offering under Rule 502 (a) of Regulation D under the securities act of 1933.

(5) The duration of the offering period shall not exceed one year, although the issuer may extend the offering for up to an additional one year by filing amended and updated disclosure materials, together with any advertising, with the division in conformance with the requirements of sub. (8). If the disclosure materials provide that a minimum dollar amount of offering subscriptions must be received before the issuer may utilize any of the proceeds, all subscriptions shall be held by a financial institution under an impounding agreement until the required minimum subscription level is reached.

(6) The issuer reasonably believes that all sales made pursuant to this exemption are suitable for the purchaser and that the purchaser either alone or with the purchaser's representative has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the investment.

(7) An offering document is delivered to each purchaser prior to the sale of the securities that meets one of the following requirements:

(a) For offerings by a corporate issuer, an offering document that complies with the North American Securities Administrators Association, Inc. Form U-7 Small Corporate Offering Registration and Prospectus Disclosure Form, except that the financial statements may be either audited or reviewed; or

(b) For offerings by any type of issuer, an offering document that complies with the disclosure requirements of rule 502 (b) (2) of Regulation D under the securities act of 1933.

(8) The issuer or applicant files with the division:

(a) The offering document to be used in connection with the offer and sale of the securities, not later than the date of the first use of the document in this state, together with a fee of \$200; and

(b) A letter specifying how the requirements for use of this exemption contained in the introduction and in subs. (1) to (7) are met or will be met; and

(c) A copy of all advertising, other than the offering document and except for solicitation of interest materials previously filed pursuant to s. DFI-Sec 2.027, to be used in connection with the offer and sale of the securities, not later than the date of its first use in this state, and a copy of all material amendments to the offering document, not later than the date of first use of each material amendment in this state.

History: Cr. Register, March, 1986, No. 363, eff. 4-1-86; r. and rec. Register, December, 1990, No. 420, eff. 1-1-91; am. (3) and (4), Register, December, 1991, No. 432, eff. 1-1-92; am. (intro.), renum. (6) to (8) to be (7) to (9), cr. (6), Register, December, 1994, No. 468, eff. 1-1-95; am. (1) (intro.), (4), r. (5), renum. (6) to (9) to be (5) to (8) and am. (7) (a), (8) (b) is renumbered to (8) (c) and amended, cr. (8) (b), Register, December, 1995, No. 480, eff. 1-1-96; correction in (5) made under s. 13.93 (2m) (b) 7., Stats., Register, November, 1996, No. 491; renum. from SEC 2.027, r. (1) (b), renum. (1) (c) to be (1) (b), Register, December, 1996, No. 492, eff. 1-1-97; CR 01-083: am. (4), Register December 2001 No. 552, eff. 1-1-02; CR 08-077: am. (intro.), (1) (a), (2) and (3) Register December 2008 No. 636, eff. 1-1-09; correction in (1) (a) made under s. 13.92 (4) (b) 7., Stats., Register February 2009 No. 638.

DFI-Sec 2.029 Federal regulation D rule 505 exemption by filing. (1) Any offer or sale of securities made in reliance on the exemption provided by Rule 505 of Regulation D under the Securities Act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder constitutes a transaction exempt from registration under s. 551.203, Stats., if the

offer or sale also satisfies the additional conditions and limitations in sub. (2) to (6).

(2) No commission or other remuneration may be paid or given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under sub. (1), except to broker-dealers and agents registered in this state or exempt from registration under s. 551.401 (2) or 551.402 (2), Stats.

(3) (a) Unless the cause for disqualification is waived under par. (b) 2., no exemption under sub. (1) is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following applies to any of the persons described in 17 CFR 230.262 (a), (b), or (c):

1. The person has filed a registration statement which is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to any state's law within 5 years before the filing of a notice required under sub. (4) denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

2. The person has been convicted of any felony or misdemeanor in connection with the offer, sale or purchase of any security or franchise, or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. The person is subject to an effective administrative order or judgment entered by a state securities administrator within 5 years before the filing of a notice required under sub. (4), which prohibits, denies or revokes the use of any exemption from securities registration, which prohibits the transaction of business by the person as a broker-dealer or agent, or which is based on fraud, deceit, an untrue statement of a material fact or an omission to state a material fact.

4. The person is subject to any order, judgment or decree of any court entered within 5 years before the filing of a notice required under sub. (4), temporarily, preliminarily or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale or purchase of any security, or the making of any false filing with any state.

(b) 1. Any disqualification under this paragraph involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be registered in this state as a broker-dealer or agent after notifying the division of the act or event causing disqualification.

2. The division may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(4) Not later than the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under sub. (1), there is filed with the division a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the Securities Act of 1933, a completed Form D as prescribed by Rule 503 of Regulation D under the Securities Act of 1933, and a fee of \$200. Material amendments to the offering document shall be filed with the division not later than the date of their first use in this state.

(5) (a) As to all sales in this state, the issuer shall reasonably believe immediately before making any sale that:

1. The investment is suitable for the purchaser; and

2. The purchaser, either alone or with the purchaser's representative, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the prospective investment.

(b) The failure to satisfy the conditions of par. (a) as to a purchaser does not affect the availability of the exemption under sub. (1) as to other purchasers.

(6) The division may, by order, increase the number of purchasers or waive any other conditions of the exemption under sub. (1) for a particular offering. The division shall not require the filing of advertising used in connection with offers or sales in reliance on the exemption. The exemption may be revoked by order of the division, but only if the offering constitutes or would constitute a violation of s. 551.401 (1) or 551.402 (1), Stats., and notice thereof has been received by the issuer, or constitutes or would constitute a violation of s. 551.501, Stats.

History: CR 08-077: cr. Register December 2008 No. 636, eff. 1-1-09.

DFI-Sec 2.03 Exemption proceedings. (1) If a notice is required to be filed in order to seek to claim registration exemption status pursuant to s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the notice shall consist of a copy of any prospectus, circular or other material to be delivered to offerees, the fee prescribed by s. DFI-Sec 7.01 (2), and a cover letter describing how the offering will meet all the requirements for use of the exemption sought to be utilized.

(2) If any information is reasonably required by the division prior to the effective date of an exemption, in connection with the examination of any notice filed pursuant to s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the notice is not deemed filed until the information so required is filed with the division.

(3) An order of the division disallowing an exemption with respect to a specified security or transaction pursuant to s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., has the same effect as an order denying or revoking an exemption pursuant to s. 551.204, Stats.

History: Cr. Register, December, 1969, No. 168, eff. 1-1-70; r. and recr. Register, August, 1972, No. 200, eff. 9-1-72; am. (1), Register, December, 1977, No. 264, eff. 1-1-78; r. and recr. (1), Register, December, 1981, No. 312, eff. 1-1-82; am. (1), Register, December, 1982, No. 324, eff. 1-1-83; am. (1), Register, December, 1991, No. 432, eff. 1-1-92; CR 08-077: am. Register December 2008 No. 636, eff. 1-1-09.

DFI-Sec 2.04 Federal covered security notice filings. (1) (a) With respect to a federal covered security referred to in s. 551.302 (1) (a), Stats., unless the security is registered or exempt from registration under s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the issuer or a person acting on behalf of the issuer shall file with the division not later than the initial offer of the security in this state, a consent to service of process signed by the issuer and the notice filing fee prescribed under s. DFI-Sec 7.01 (2) (d). If a completed Form NF as prescribed in s. DFI-Sec 9.01 (1) (d) is included with the consent to service of process and the notice filing fee, the issuer need not also include with the filing copies of any documents that are part of the registration statement filed under the securities act of 1933, although the division may at a later time require the filing of a copy of any document that is part of the registration statement filed under the securities act of 1933.

(b) After the initial offer in this state of a federal covered security referred to in s. 551.302 (1) (a), Stats., if the issuer files an amendment to its registration statement with the U.S. securities and exchange commission under the securities act of 1933 that relates either to a name change of the issuer, or to a change in the designation of the federal covered security, the issuer or a person acting on behalf of the issuer shall file with the division concurrent with the federal filing, a fee of \$200, which shall be accompanied by a copy of each amendment-related document filed with the U.S. securities and exchange commission unless the issuer files with the division a completed Form NF as prescribed in s. DFI-Sec 9.01 (1) (d). The division may at a later time require the filing of a copy of any document relating to the amendment filed under the securities act of 1933.

(c) A unit investment trust or closed-end investment company may extend the offering of its securities beyond a one-year period pursuant to s. 551.302 (1) (c), Stats., by filing a notice of extension not less than 30 days prior to the end of one year from the date of filing of the initial notice with the division, or an extension notice filed under this paragraph, whichever is most recent. A notice shall consist of a copy of an updated Form NF as prescribed in s. DFI-Sec 9.01 (1) (d), together with a fee of \$200, and at the option of the filing party, a cover letter identifying the most recent prior filing status with the division for the issuer's securities.

(2) With respect to a federal covered security referred to in s. 551.302 (3), Stats., unless the security is registered or exempt from registration under s. 551.201, 551.202, Stats., or rule or order under s. 551.203, Stats., the issuer or a person acting on behalf of the issuer shall make a filing with the division not later than 15

days after the first sale of the security in this state that meets the requirements of either of the following:

(a) A notice consisting of a photocopy of a completed Form D as prescribed by rule 503 of regulation D under the securities act of 1933 that has been filed electronically with the U.S. securities and exchange commission, together with a \$200 fee.

(b) An electronic filing under the Electronic Filing of Form D (EFD) System developed by the North American Securities Administrators Association and operated by PNC Global Investment Servicing or its affiliate, that designates Wisconsin as a state in which the offering is or will be made, and allocates to Wisconsin a \$200 fee.

History: Cr. Register, December, 1998, No. 516, eff. 1-1-99; am. (1) (a), Register, December, 1999, No. 528, eff. 1-1-00; CR 01-082: cr. (1) (c), Register December 2001 No. 552, eff. 1-1-02; CR 08-077: am. (1) and (2), r. (3) and (4) Register December 208 No. 636, eff. 1-1-09; **CR 09-056: am. (2) Register December 2009 No. 648, eff. 1-1-10.**